

Resolution No.: 15-857

Introduced: January 18, 2005

Adopted : January 18, 2005

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION
OF THE MARYLAND-WASHINGTON REGIONAL DISTRICT
IN MONTGOMERY COUNTY**

By: County Council

SUBJECT: APPLICATION NO. G-821 FOR AMENDMENT TO THE ZONING ORDINANCE MAP,
William Kominers, Esquire, Attorney for Tricapital Partners, LLC, Applicant, OPINION
AND RESOLUTION ON APPLICATION

Tax Account No. 00272176

OPINION

Application No. G-821, filed on February 23, 2004 by Applicant TriCapital Partners, LLC, requests reclassification from the R-60 Zone to the R-T 8 Zone of 2.00 acres of land known as Lot 2, Seibel's Subdivision and located at 3961 Greencastle Road in Burtonsville, Maryland, in the 5th Election District.

The Hearing Examiner recommended approval of the application on the basis that the R-T 8 Zone at the proposed location would satisfy the requirements of the purpose clause; that the application proposes a form of development that would be compatible with existing and planned land uses in the surrounding area; and that the proposed reclassification bears sufficient relationship to the public interest to justify its approval. The Montgomery County Planning Board ("Planning Board") and its Technical Staff provided similar recommendations. The District Council agrees with these conclusions.

The subject property measures approximately two acres and is located on the west side of Greencastle Road, south of Route 29 and north of the county line, near Burtonsville. The property is roughly L-shaped, with a depth of approximately 450 feet and about 150 feet of frontage on Greencastle Road. It is classified under the R-60 Zone and is currently developed with a single-family home and a

driveway providing access to Greencastle Road. The rear portion of the property is wooded and slopes steeply down toward a small stream that flows through the property, running north to south along the western property line. The stream is an unnamed tributary to the Little Paint Branch. The rear of the property is unbuildable due to the stream buffer and 100-year floodplain.

The surrounding area for this application consists of the area bounded generally by Greencastle Road and Fairland Recreational Park on the east, Robey Road to the north, Sheffield Manor Drive to the west, and the Prince George's County line to the south. The surrounding area east of Greencastle Road is occupied by open space and athletic fields within Fairland Recreational Park, in the RE-2 Zone. These areas are screened from view from Greencastle Road by landscaping. The surrounding area west of Greencastle Road is developed with high density residential uses consisting mostly of garden apartments and condominiums in the R-30 Zone. The parcels closest to the subject property, including abutting properties and those within 1,500 feet, are either developed with townhouses or expected to be developed with townhouses. The property immediately north of the subject property is classified under the R-30 Zone and is the subject of an approved preliminary plan of subdivision for condominium townhouses. That property is currently under contract to a developer who is planning to develop townhouse condominiums on that property, the property adjacent to it to the north (which is the subject of an approved subdivision plan under the R-T 8 Zone), and the property abutting the subject property to the south (which is the subject of an approved site plan under the R-T 8 Zone). The next property to the north on Greencastle Road contains an existing townhouse development in the R-T 10 Zone. The rest of the surrounding area west of Greencastle Road consists of multi-family housing in the R-30 Zone. The subject property is the last remaining parcel in the surrounding area classified under a single-family residential zone.

Technical Staff reports that the subject property is depicted in the R-60 Zone in the County's 1958 Zoning Map. The subject property was subdivided as a single residential lot in 1957, Lot 2 of Seibel's Subdivision. Seibel's Subdivision consisted of two 2-acre lots, Lot 1 and Lot 2. The MNCPPC sought to reclassify both lots to the R-T 8 Zone by sectional map amendment in 1997, as

part of its implementation of the *1997 Approved and Adopted Fairland Master Plan*. This effort was only partially successful, because the owner of Lot 2 (the subject property) refused to consent to the reclassification due to concerns about property tax increases. As a result, Lot 1 of Seibel's Subdivision was reclassified to the R-T 8 Zone by SMA G-747, and the subject property remained in the R-60 Zone.

The Applicant proposes to build townhouses on the subject property. Under the requested R-T 8 zoning, a two-acre site normally would be permitted to have up to 16 townhouses. In this case, the rear portion of the site is entirely occupied by flood plain and stream valley buffer areas in which no development is permitted. The Applicant would be permitted to cross the conservation area to connect to an existing sewer line if necessary, but no other building activity would be permitted. The buildable portion of the property, therefore, is significantly smaller than two acres and is very unlikely to actually accommodate 16 dwelling units. The Applicant's representative and its land planner both testified before the Hearing Examiner that the site could be viably developed with townhouses, even taking into account the environmental constraints. Details about the configuration of the development would be determined during subdivision and site plan review.

Consistent with the standard method application, the case at hand is presented without a site plan or binding elements. Technical Staff notes that the subject property exceeds the minimum tract area for the R-T 8 Zone, and that the development would be required to satisfy all of the other development standards for the zone at the time of subdivision and site plan review. These standards include a maximum of 35 percent building coverage, a minimum of 50 percent green area, and at least two parking spaces per dwelling unit.

The subject property includes approximately 1.19 acres of forest. Environmental Planning Staff at the MNCPPC report that the large area of forested stream valley buffer on the property would satisfy the site's forest conservation requirements. The Applicant would be required to submit a stormwater management plan to the Department of Permitting Services for approval, prior to approval of the preliminary plan of subdivision. The evidence indicates that the proposed development would

generate only a small number of vehicular trips, that utilities are readily available at the site, and that the small number of public school students generated could be accommodated by existing schools.

The District Council concludes that the proposed rezoning would comply with the purpose clause of the R-T 8 Zone. The purpose of the R-T Zone is to provide suitable sites for townhouses in "sections of the County that are designated or appropriate for residential development at densities allowed in the R-T Zones" or in "locations in the County where there is a need for buffer or transitional uses between commercial, industrial, or high-density apartment uses and low-density one-family uses." Code §59-C-1.721. In this case, the *1997 Approved and Adopted Fairland Master Plan* designates the subject property for development under the R-T 8 Zone. Moreover, the evidence supports the further conclusion that the subject property is appropriate for residential development at densities permitted in the R-T Zones, in light of the prevailing land use and zoning patterns in the surrounding area.

The subject property is the only property remaining in the surrounding area with a single-family zoning classification, and the existing single-family home on the property is out of character with the area. The surrounding area is dominated by garden apartments and condominiums in the R-30 Zone. The properties on either side of the subject property are expected to be developed with townhouses and have approved subdivisions and site plans in place. In addition, the next property to the north is already developed with townhouses. Nearby developments have been built in the R-T 10, R-T 8 and R-30 zones, with densities of ten, eight and 14.5 dwelling units per acre, respectively. The proposed rezoning would complete development of the surrounding area west of Greencastle Road at a maximum of eight dwelling units per acre, the lowest density commonly found in the surrounding area. For all of these reasons, the District Council agrees with the conclusion reached by the Hearing Examiner, the Planning Board and Technical Staff that the subject property is appropriate for development at the R-T density proposed in this application.

The stream buffer conservation easement would be consistent with the intent of the R-T Zone to provide amenities normally associated with less dense zoning categories, as it would preserve a visual and perhaps recreational open space amenity. For the reasons discussed in the previous

paragraph, the proposed development would be compatible with existing and planned land uses in the surrounding area. Accordingly, the evidence demonstrates that the proposed rezoning and development would be consistent with the intent of the R-T Zone to prevent detrimental effects to adjacent properties and to promote the health, safety, morals and welfare of the present and future inhabitants of the district and the County. The District Council concludes that the proposed reclassification and development would satisfy the purpose clause of the R-T 8 Zone.

The District Council further determines that the proposed reclassification bears sufficient relationship to the public interest to justify its approval. The Planning Board and Technical Staff opined that the proposed development would substantially comply with the Master Plan, and the Hearing Examiner agreed. The proposed reclassification would permit the implementation of a primary recommendation for the site in the Master Plan: development under the R-T 8 Zone. The Applicant's representative and its land planner testified that the proposed development would follow all of the recommendations in the Master Plan, and confidently stated that this could be accomplished in a viable manner, even taking into account the substantial conservation easement. Moreover, the favorable opinions of the Planning Board and Technical Staff serve as persuasive evidence that the proposed development would be appropriate at this location and would serve the public interest.

The evidence supports a finding that the proposed development would have no adverse impact on traffic or local roadways. The development would generate only a small number of vehicular trips, and Greencastle Road is scheduled for significant improvements. While Technical Staff did not specifically opine as to the effect of the proposed development on local roadways, Staff's recommendation that the application be approved indicates that they believe the application to be in the public interest. Moreover, the Planning Board's recent approval of two other townhouse developments in the immediate vicinity suggests that such development is appropriate in the area. While two of the high schools in the local high school consortium experience some overcrowding, no evidence was presented to suggest that the small number of students expected to be generated by the proposed development would have an adverse effect on school capacity. Moreover, the County Council determined in the FY

03-05 AGP Policy Element that school capacity is adequate to support additional residential development.

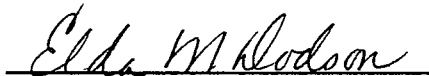
For these reasons and because to grant the instant zoning application would aid in the accomplishment of a coordinated, comprehensive, adjusted and systematic development of the Maryland-Washington Regional District, the application will be granted in the manner set forth below.

ACTION

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District located in Montgomery County, Maryland approves the following resolution:

Zoning Application No. G-821, requesting reclassification from the R-60 Zone to the R-T 8 Zone of 2.00 acres of land known as Lot 2, Seibel's Subdivision and located at 3961 Greencastle Road in Burtonsville, Maryland, in the 5th Election District, is hereby approved in the amount requested.

This is a correct copy of Council action.



Elda M. Dodson, CMC
Acting Clerk of the Council